

Letter of Findings Number: 04-20110144
Sales/Use Tax
For Tax Year 2008

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ISSUE

I. Sales/Use Tax—Equipment.

Authority: IC § 6-8.1-5-1(c); IC § 6-2.5-3-2(a); IC § 6-2.5-3-4; IC § 6-2.5-5-2; IC § 6-2.5-5-3(b); [45 IAC 2.2-5-1\(a\)](#); [45 IAC 2.2-5-4\(a\)](#); [45 IAC 2.2-5-8\(c\)](#); [45 IAC 2.2-5-8\(d\)](#).

Taxpayer protests the imposition of use tax on various equipment.

STATEMENT OF FACTS

Taxpayer states that he is in the timber harvesting business. Taxpayer purchased a Cut Tractor, Loader, Lift Rotary Cutter, and two Pallet Forks ("Equipment") exempt from sales tax. The Department issued a proposed assessment for use tax on the equipment (interest and a ten percent negligence penalty were also assessed. In a letter dated February 8, 2011, the Department waived the penalty). Taxpayer filed a protest. An administrative telephone hearing was conducted and this Letter of Findings results. Further facts will be supplied as required below.

I. Sales/Use Tax—Equipment.

DISCUSSION

The Department initially notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c). Indiana imposes "an excise tax, known as the use tax," on tangible personal property that is acquired in retail transactions and is stored, used, or consumed in Indiana. IC § 6-2.5-3-2(a). An exemption from the use tax is granted for transactions when sales tax was paid at the time of purchase pursuant to IC § 6-2.5-3-4. Since Taxpayer failed to pay sales tax at the time of the purchase, the Department found that the equipment was subject to use tax.

Taxpayer states that he "own[s] and manage[s] over 1,000 acres of timber producing land" in Indiana. In correspondence to the Department, Taxpayer states that the equipment at issue is for timber production, stating that the "tractor and loader and forks are used" for "harvesting [and] extraction of logs[,] clearing down logs off logging lanes[,] [and] clearing limbs off logging lanes." Taxpayer also states that the "tractor and [] rotary cutter is used" for "[m]owing logging lanes[,] [and] mowing off invasive undesirable trees, weeds (many of the timber producing acres were planted in hardwood timber plantings in the Conservation Reserve Program (CRP))."

The "General Sales Tax Exemption Certificate" that Taxpayer filled out for the purchase has the box for "Sales to persons, occupationally engaged as farmers, to be used directly in production of agricultural products for sale" checked. The Department initially notes that for Indiana tax purposes, Taxpayer is not engaged in agricultural production. As IC § 6-2.5-5-2 states:

- (a) Transactions involving agricultural machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for his direct use in the direct production, extraction, harvesting, or processing of agricultural commodities.
- (b) Transactions involving agricultural machinery or equipment are exempt from the state gross retail tax if:
 - (1) the person acquiring the property acquires it for use in conjunction with the production of food and food ingredients or commodities for sale;
 - (2) the person acquiring the property is occupationally engaged in the production of food or commodities which he sells for human or animal consumption or uses for further food and food ingredients or commodity production; and
 - (3) the machinery or equipment is designed for use in gathering, moving, or spreading animal waste.(Emphasis added).

[45 IAC 2.2-5-1\(a\)](#) also states in relevant part, "'Farming' means engaging in the commercial production of food or agricultural commodities as a farmer[.]" and [45 IAC 2.2-5-4\(a\)](#) states, "Agricultural exemption certificates may be used only if the purchaser is occupationally engaged in the business of producing food or commodities for human, animal, or poultry consumption for sale or for further use in such production." (Emphasis added). Taxpayer's equipment thus does not come within the scope of agricultural production.

The Department next examines the relevant statutes and regulations relating to manufacturing. IC § 6-2.5-5-3(b) contains the so-called double direct test, which states:

- (b) Except as provided in subsection (c), transactions involving manufacturing machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or

finishing of other tangible personal property. (Emphasis added).

And [45 IAC 2.2-5-8\(c\)](#) states:

The state gross retail tax does not apply to purchases of manufacturing machinery, tools, and equipment to be directly used by the purchaser in the production process provided that such machinery, tools, and equipment are directly used in the production process; i.e., they have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces tangible personal property.

(Emphasis added).

Further, pre-production and post production activities are excluded from the exemption in [45 IAC 2.2-5-8\(d\)](#), which states that:

Pre-production and post-production activities. "Direct use in the production process" begins at the point of the first operation or activity constituting part of the integrated production process and ends at the point that the production has altered the item to its completed form, including packaging, if required.

–EXAMPLE–

(1) The production of pharmaceutical items is accomplished by a process which begins with weighing and measuring out appropriate ingredients, continues with combining and otherwise treating the ingredients, and ends with packaging the items. Equipment used to transport raw materials to the manufacturing plant is employed prior to the first operation or activity constituting part of the integrated production process and is taxable. Weighing and measuring equipment and all equipment used as an essential and integral part of the subsequent manufacturing steps, through packaging, qualify for exemption. Equipment which loads packaged products from the packaging step of production into storage, or from storage into delivery vehicles, is subject to tax.

(Emphasis added).

Taxpayer states that "[s]apling survival is key in overall success of the hardwood tree planting" and that the "[b]iggest threats are browsing deer and competition from other grasses, weeds, vines and invasive shrubs." Taxpayer states, in pertinent part, that the equipment is used in the following ways (numbering below added for convenience):

1. "Before planting the tractor itself is needed to pull my 300 gallon herbicide spray trailer to kill off all existing plant life–this is a onetime job only."
2. "Deer browse off all the new growth from the small tree and inhibit the trees growth. Continued browse eventually kills the tree. Consulting foresters and DNR foresters both recommend keeping the logging lanes mowed to encourage deer to travel the mowed lanes and not in the planted tree fields. [] The tractor with the rotary cutter attachment is needed for this job."
3. "The tractor and rotary cutter is needed to mow down the competing plants and the tractor alone is needed to pull the 300 gallon herbicide sprayer that has a hand spray tip to accurately spray and not hit my young planted trees. The tractor and sprayer is used in the same way inside my older established woods."
4. "The tractor with the loader bucket is used for ripping out the large bushes and the smaller bushes can be mowed or sprayed to kill."
5. "The last implement, the palletforks, is only occasionally used to help keep the logging lanes clear inside the woods. Downed rotted trees that fall across the access lanes can be picked up and moved off the lanes with the forks. Timber Stand Improvement (TSI) usually involves cutting down less valuable trees in the woods and these trees need to be cleared off the trails. TSI is very important in shaping one's tree crop into growing the best and most valuable timber possible. Good access into the woods is needed for TSI work. The loader bucket sometimes can move the smaller logs."

Number "1" above describes, at best, pre-production under [45 IAC 2.2-5-8\(d\)](#). Numbers "2" through "5" do not meet the double direct test of IC § 6-2.5-5-3(b)—that is, the mowing of lanes, the mowing of competing plants, the removal of trees from lanes, and removal of brush and "[d]owned rotted trees," are not tax exempt uses of the equipment.

FINDING

Taxpayer's protest is respectfully denied.

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